United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

76-1587

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BPMS

DOCKET NO. 76-1587

UNITED STATES OF AMERICA,

APPELLEE,

V.

CHESTER KASIANCZUK,

APPELLANT.

APPENDIX TO BRIEF OF APPELLANT CHESTER KASIANCZUK

RICHARD S. CRAMER
ASSISTANT FEDERAL PUBLIC DEFENDER
450 MAIN STREET
HARTFORD, CONNECTICUT 06103

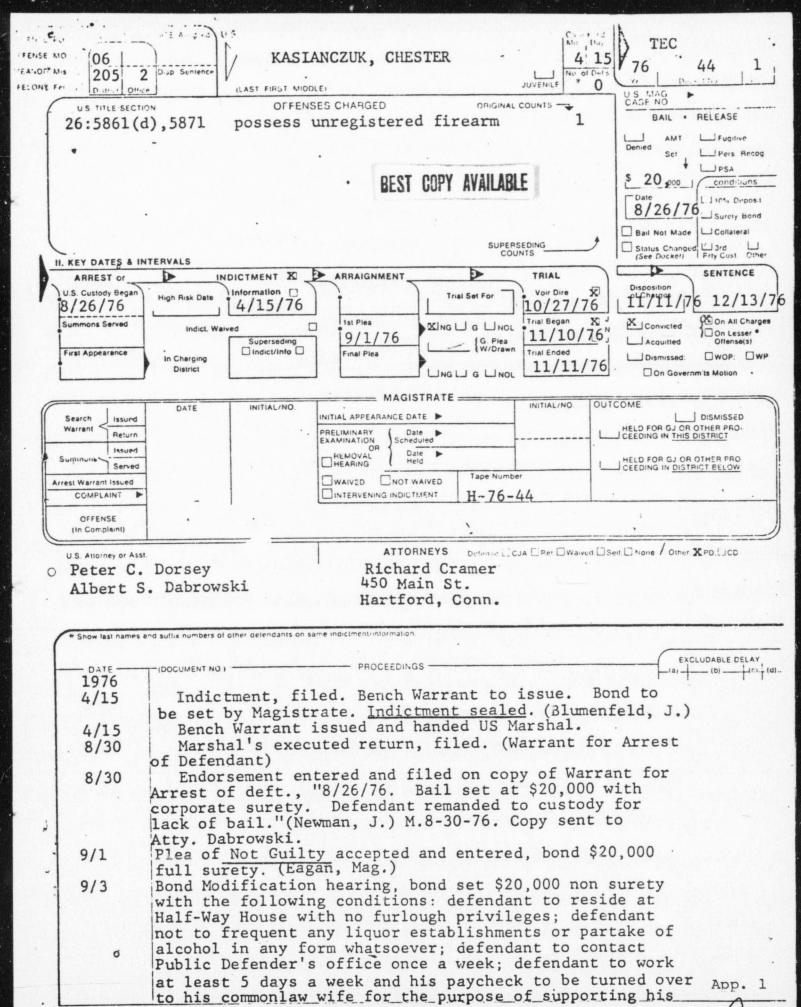
ATTORNEY FOR APPELLANT



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FORM AO-256

Continued

DATE	Crim. H-76 4 USA vs. Kasi. czuk	V LACTUDAPIT PETA
	(DO THENT NOT	nova terror
	four children and his common law wife; defendant	tat i its ict
	is not to contact government witnesses known to him.	
•	especially, Mr. Salvatore Mancini. (Eagan, Mag.)	
0/7	에 보고 있다면 (1) 가장 사용 전에 가장 이 사용 전에 가장 이 사용이 되었다면 되었다면 보고 있다면 보고 있다면 되었다면 되었다면 보고 있다면 보고 있다면 되었다면 보고 있다면 보고 있다	
9/7	Magistrate's papers filedCJA 23, Financial	_
	Affidavit, Notice of Readiness, and Bond in the amount	10
0./7	of \$20,000 with additional conditions. (Eagan, Mag.)	
9/7	Magistrate's papers filedtwo (2) tapes	
0/2	(Eagan, Mag.)	
9/1	Letter dated September 1, 1976 from M. Hatcher	
	Norris re unsealing of indictment, filed. USA Form	
9/10	Notice of Compliance with Local Rule 4 of the	
9/10		
	Speedy Trial Act, filed.	
9/15	BRA Form No. 2, filed.	
10/15	Defendant's Motion to Extend The Boundary Limits	
	of His Bond and Order granting motion, filed.	
	(Eagan, Mag.) M.10-15-76. Copies sent to counsel	
*	of record.	
10/27	Deft's. Jury Questions, filed.	
10/27	JURY ASSG. LIST - Voir Dire Questions submitted	
	by Govt. Motion For Grand Jury Testimony of Govt.	
	witnesses Prior to Trial, filed by deft. Denied	
	without prejudice. Voir Dire Oath administered.	
	Jury of 12 and 1 alternate picked. (Clarie, J.)	
	Jury sworn - case to go on after Dukes case. (Clarie,	, J.)
10/29	Affidavit in Support of Subpoena of Defense Wit-	
	ness, Peggy Prentice with Endorsement thereon, filed,	
	Endorsement reads, "10/28/76 The defendant's request	
	for in forma pauperis subpoena of witness is granted	;
	So ordered. "(Clarie, J.) m-10/29/76 Two attested copie	88
	handed US Marshal and copy handed Atty. Cramer.	
11/9	Notice of Compliance With Deft's. Discovery	' '
	Requests, filed.	
*10/26	JURY ASSG. LIST - 1st Jury case (Clarie, J.)	
11/10	Deft's Request to Charge, filed.	
11/10 11/10	JURY TRIAL commences. 13 jurors report. Court	
11/10	exh.A, filed. 8 Govt. witnesses sworn & testified.	
	Govt. exh. 1 thru 3, filed. Govt. Requested Jury	
	Instructions, filed. Govt. rests at 2:43 p.m. 2	
	Deft. witnesses, previously sworn, resumed stand &	
	continued testimony. 2 Deft. witnesses sworn & testi fied. Court adjourned at 5:00 p.m. until tomorrow	
	at 10:00 a.m. (Clarie, J.)	
11/11	JURY TRIAL continues. 13 jurors report. 2 wit-	
11/11	nesses previously sworn resumed stand & testified.	
	Def. rests at 10:30 a.m. Govt. has no rebuttal.	
	Govt. summations from 10:31 a.m. to 11:00 a.m. Def.	
	summations from 11:03 a.m. to 11:22 a.m. Govt.	
	rebuttal from 11:23 a.m. to 11:45 a.m. Atty. Cramer	
	moves for dismissal based on remarks of Atty Debrow	ski (contid)
	moves for dismissal based on remarks of Atty. Debrow	one (cone a.)
DATE	RECEIPT NUMBER C.D. NUMBER DATE RECEIPT NUMBER	C.D. NUMBER
	<u> </u>	

AO-257

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Docket No. DATE V. EXCLUDABLE DELAY PROCEEDINGS (continued) ; (c) (d) 1976 (Document No.) 11/11 (cont'd.) on rebuttal. Court summations from 1:12 p.m. to 1:38 p.m. One alternate excused by Jury retires for deliberation at 1:41 p.m. Exceptions to charge stated by Atty. Cramer. Exh. and Indictment given to jury at 1:48 p.m. Jury sends note out at 2:00 p.m. Jury returns to Courtroom at 2:02 p.m. and are given explanation of charge re: possession by re-reading of part of charge. Jury retires at 2:09 p.m. Jury returns to Courtroom at 3:46 p.m. with verdict of guilty as charged. Verdict ordered accepted and filed. Atty. Dabrowski requests \$20,000 full surety bond. Bond set at \$5000 with full surety. Court exh. B, filed. Court adjourned at 3:55 p.m. (Clarie, J.) CJA 23 Financial Affidavit of Trial witness, 11/11 with Endorsement thereon, "11/11/76. Finding of indigency by the Court. So Ordered. (Clarie, J.) M.11-12-76, filed. CJA 20 executed (Templeton, DC.) appointing 11/11 Richard R. Brown to represent trial witness, filed. Court Reporter's notes of Proceedings held on November 10 and 11, 1976, filed in Hartford. (Sperber, R.) 11/15 11/18 CJA 29 executed (Clarie, J.) and mailed to A.O. for payment. (Atty. Brown) Memorandum in Support of Motion For Judgment of 11/18 Acquittal, filed, along with Motion For Judgment of Acquittal. 11/19 Endorsement entered and filed on Motion For Judgment of Acquittal, "11/19/76. Motion denied." (Clarie, J.) M.11-19-76. Copies sent to counsel. A SAN AND A SAN AND A SAN AS A DISPOSITION - 18 mos. impr. Court will modify 12/13 that by reducing sentence by 2 months served at Halfway House making final order 16 mos. impr. (Clarie, J.) 12/14 Judgment and Commitment Order, filed. (Clarie, J.) M.12-15-76. Two attested copies handed US Marshal and one attested copy handed US Probation Officer. 12/14 Notice of Appeal, filed. Copies sent to counsel. Certified copies of docket and Notice of Appeal 12/15 mailed to USCA. 12/15 CJA 21 executed (Clarie, J.) authorizing transcript. 12/28 Copy of Schedule of Hearing, filed. 12/30 Acknowledgement from USCA on documents mailed on December 15, 1976, filed. 12/29 Copy of Schedule of Hearing, filed. 1977 1/10 Court reporter's transcripts of Proceedings held on Nov. 10 & 11, 1976, filed. (2 vol.) (Sperber, R.) App.

INITED STATES DISTRICT COURT

CRIMINAL DOCKET USA vs. Chester Kasianczuk Crim. H-76-44

.. W. V.

DATE 1977	PROCEEDINGS (continued)	V. E	XCLUDABLE (b)	DELA (c) (c)
1/6	Marshal's executed return, filed. (Judgment and Commitment Order)			
1/11	CJA 21 executed (Clarie, J.) and mailed to A.O. for payment.			
1/11 1/12	Motion To Correct Judgment, filed. Order granting Motion to Correct Judgment, " sentence originally imposed on December 15, 1976, be modified by reducing it to a total of 16 months." (Clarie, J.) M.1-13-77 Copies sent to counsel. Two attested copies handed US Marshal in New Haven by K.M.			
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			App. 4	

FILER APR 15 4 11 PH '76 UNITED STATES DISTRICT COURT U.S. DISTRICT COURT HASTOND, CONN. DISTRICT OF CONNECTICUT UNITED STATES OF AMERICA CRIMINAL NO. H-76-44 CHESTER KASIANCZUK INDICTMENT The Grand Jury charges: ONE COUNT On or about March 26, 1976, in the District of Connecticut, CHESTER KASIANCZUK, the defendant herein, did knowingly possess a certain firearm, to wit: a Stevens 12 gauge shotgun, Serial No. Pl93794 with the barrel cut off to the length of 9-1/4 inches and with an overall length of 17-3/8 inches, which firearm had not been registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Coc, Sections 5861(d) and 5871. A TRUE BILL Foreman PETER C. DORSEY United States Attorney Assistant United States Attorney App. 5

IX. Defendant's Theory of the Case.

You are instructed that the defendant's position is that, though he may have held the weapon in his hands, he did not possess it within the meaning of the statute. It is his position that he simply had fleeting possession of the weapon and meant to permanently dispose of it almost immediately upon its discovery by him. It is his position that the government witnesses must have falsely testified against him for reasons of their own, such as to obtain their own freedom from imprisonment by providing a target for prosecution other than themselves. [The Second Circuit has found error when the trial court failed to charge on defendant's theory of the case. United States v. Alfonso-Perez, Docket No. 75-1395 (2d Cir. May 17, 1976).]

1	BRUCE E. BOLAND, appearing as
2	a witness, being duly sworn, testified as follows:
3	THE CLERK: Would you state your full name?
4	THE WITNESS: Bruce E. Boland.
5	THE CLERK: Your address, Mr. Boland?
6	THE WITNESS: 155 Morgan Street.
7	DIRECT EXAMINATION BY MR. DABROWSKI:
8	Q Mr. Boland, how are you employed?
9	A Hartford Police Officer.
10	Q How long have you been a Hartford Police Officer?
11	A About four years now.
12	Q Were you so employed March 26, 1976?
13	A Yes.
14	Q Do you recall, directing your attention to
15	March 26th, the early morning hours, do you recall what
16	hours you were working at that time?
17	THE COURT: Can we bring out first,
18	Counselor, how long he has been a police officer;
19	whether he's undercover or a patrolman; what
20	position he has; what his educational background
21	is, so we will know how to evaluate his testimony?
22	MR. DABROWSKI: Fine, your Honor. I believe
23	he testified that he was an officer for four years.
24	Q Are you a regular patrolman?
25	A Yes.

We were parked in the Mobil Station on the corner of Park and Sisson, conversing at the time.

- Q What is Officer Murphy's full name?
- A Thomas J. Murphy.
- Q Now, at approximately 1:00 a.m. on the morning of March 26th, 1976 did you overhear a radio message?

A At that time we were dispatched to Number 4 New Park Avenue, the Royal Cafe.

- Q How far were you from the Royal Cafe at the time you got this radio message?
 - A I would say approximately 50 yards.
 - Q You were, in fact, right across the street?
 - A Right across the street.
- Q Across the street -- when you cross the intersection, as opposed to the street?
 - A Right.
- Q You say you were dispatched. Exactly, the best you can recollect, what was the radio message that you heard?
- A Well, they used the standard procedure; they'll dispatch two cars, 13 and 14, Number 4 New Park, Alo83 -- a sawed-off shotgun.

MR. CRAMER: I object, your Honor. That's hearsay.

THE COURT: Well, you were dispatched to investigate a sawed-off shotgun, right?

THE WITNESS: Yes.

THE COURT: The Court will allow that as part of his police work.

THE WITNESS: It is sent out, a standard dispatch, Number 1083, indicating a gun call.

And they specify with further details, such as in this case it was a white male in a blue vehicle, who was supposed to have a sawed-off shotgun in his possession.

BY MR. DABROWSKI:

Q But at the time you heard the message you had no personal knowledge?

A None whatsoever. They just give us basic background. From there it is our ballgame. We have to take it from there.

Q You didn't know whether in fact this individual actually did have a sawed-off shotgun in his possession at that time?

A No way of telling at that time.

Q Did you proceed over to the Royal Cafe?

A Right. Both of us went out, drove our cruisers directly across the street. I carried the shotgun that night for the area.

Q You say you carried a shotgun; what type of shotgun?

your command, or Officer Murphy's command, get out of that 2 car? 3 Yes. How many did? 5 Three. Two females and one male party. Which doors did they get out of, or when they got 6 out were you able to see where they were seated in the car? 7 8 A Yes, the two females got out of the driver's side. The first party, which was later identified as Mary Beth 10 Metz, and --THE COURT: Mary Beth --? 11 12 THE WITNESS: Metz. M-e-t-z. 13 BY MR. DABROWSKI: Q She was seated in the --? 14 A In the driver's seat. They were bucket seats. 15 She was seated in the driver's seat. 16 Then I guess it was a two door car, so the front 17 18 seat popped forward, and the party in the back seat was later identified as Prentice, Peggy Prentice, who got out of 19 20 the back seat. 21 Q Out of the driver's door? 22 Out of the driver's door, yes. A 23 Was Officer Murphy on the driver's side of the car? Q 24 A Yes, he was.

Did anybody else get out of the car?

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Q

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A Yes, a male party, who was later identified as the defendant in this case, exited the passenger door. And he went around toward the front of the car and was told to place his hands on the hood, subsequent to a command to do so.

Q You referred to the defendant in this case; are you talking about Chester Kasianczuk?

A Yes.

Q Now, as the defendant got out of the car, what did you do? Did you maintain yourself in one position behind the car, or did you move?

A Once the car had been cleared, as far as we could tell, of occupants, I approached the passenger door, which was still open from Chester exiting. As I looked inside, you know, in case somebody was laying down, or just a general inspection of the car.

And at that point is when I discovered and observed the sawed-off shotgun.

Q Showing you Government's Exhibit Number 2, which is marked for identification, do you recognize that?

A Yes, that's the shotgun. I identify it from the serial number that I recorded before.

Q You say that's the shotgun; that's the shotgun you took out of the front passenger side of that car on March 26th?

A Yes.

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Q Did you see the shotgun at any time in the hands of Chester Kasianczuk?

No. I didn't.

Q At any time after taking the gun out of the car did you examine it to determine whether or not it was loaded?

A Yes, right off the bat, the first thing you want to do is make sure that any time you are handling a firearm, make sure it is in a safe condition. I opened it, and I discovered that it contained one round of ammunition.

Q Now, when you were going into the passenger door side of the car and actually were taking this gun into your possession, what was Officer Murphy doing?

A He was maintaining control over the parties that had been -- all the parties that were now, you know, in a position of disadvantage, with their hands on the car.

Q Four people, Richard Shepard, Mary Beth Metz, Peggy Prentice, and Chester Kasianczuk?

A Yes.

Q Where were they in relation to the car?

A Peggy Prentice, Mary Beth Metz and Richard Shepard were on the driver's side, lined up alongside the side of the car and the hood. Chester was on the right side, initially, and then he was moved around to the front of the car so that Officer Murphy could maintain control over them while I was checking the inside of the car.

to be drunk to you? 2 No. Q Did he appear to have full control of his mental 3 4 faculties? 5 A Yes. MR. DABROWSKI: Nothing further, your Honor. 6 7 CROSS EXAMINATION BY MR. CRAMER: Q I am going to ask you further questions, Officer 8 9 Boland, about that evening. In response to the last few questions posed to you 10 11 by Mr. Dabrowski, you didn't impose any tests upon 12 Mr. Kasianczuk, to determine if he had been drinking, did you? 13 A No. Q And you had very little conversation with him; is 14 15 that correct? 16 Yes. Q Now, just to make the record straight, you never 17 18 saw the gun in question, this Government exhibit, in 19 Mr. Kasianczuk's hands at any time? 20 A No. Q And you never saw it on his person? By his person 21 I mean his lap or arm, or any other place on his body at 22 23 any time?

Q Okay. And how close were you to the car when you

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App. 12

_	M II O W A C
1	THOMAS J. MURPHY, appearing
2	as a witness, being duly sworn, testified as follows:
3	THE CLERK: Would you state your full name?
4	THE WITNESS: Thomas J. Murphy.
5	THE CLERK: And your address, Mr. Murphy?
6	THE WITNESS: 155 Morgan Street, Hartford.
7	DIRECT EXAMINATION BY MR. DABROWSKI:
8	Q Mr. Murphy, are you employed?
9	A Yes, I am, sir.
10	Q How are you employed?
11	A I'm a Hartford Police Officer.
12	Q How long have you been a Hartford Police Officer?
13	A I've been a regular sworn officer for over seven
14	years, and a police cadet for a year and a half.
15	Q How far through school have you been?
16	A One year in college.
17	Q Incident, or prior to becoming a Hartford Police
18	Officer, did you receive any type of training?
19	A Yes, sir, a year and a half as a police cadet,
20	working in different divisions in the Police Department.
21	And also ten weeks at the Police Academy.
22	Q Directing your attention to the early evening hours
23	of March 26, 1976, were you on duty at that time?
24	A Yes, sir.
25	Q Do you recall where you were at approximately

Now, the fourth in ividual, or the third 1 2 individual in the car, that got out of the passenger side, 3 was he subsequently identified as Chester Kasianczuk? 4 Yes, sir. A 5 He's the defendant in this case; is that correct? 6 A Yes, sir. 7 Now, when these individuals got out of the car Q. 8 did you tell them to go anywhere, to do anything specifi-9 cally? 10 A I ordered them to put their hands up on the top of 11 that car. The defendant walked around after he exited the 12 passenger side, he walked around toward the front of the car, 13 and I told him to spread eagle on the hood of the car. 14 Q What happened to Richard Shepard, the fellow who 15 was outside the car? 16 A He put his hands on top of the car, too. 17 Q Where was he with regard to the car? 18 A As the two women exited the car he backed off 19 toward the back of it, toward the trunk area. 20 Q So all four of these people now got their hands 21 on the vehicle? 22 Yes, sir. 23 And Chester Kasianczuk, he specifically had his 24 hands on the front portion of the car?

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Yes, sir.

THE COURT: Which part of it, Counselor? 1 About the search? 2 You moved to strike; I didn't know what you 3 moved --4 MR. CRAMER: I move to have the testimony, 5 strike the testimony about the search for 6 narcotics. I don't think it should carry any 7 weight. 8 THE COURT: It may be stricken as not 9 responsive. 10 MR. CRAMER: And a cautionary instruction 11 to the jury? 12 THE COURT: The jury will disregard that 13 comment. 14 BY MR. DABROWSKI: 15 Q Without commenting on what you might have found, 16 did you find anything other than the two shotgun shells on 17 the ground in the vicinity of the vehicle? 18 A The only thing I did find was the two shotgun 19 shells. 20 Q Now, subsequently you placed Chester Kasianczuk 21 under arrest; is that correct? 22 A Yes, sir. 23 Q You transported him down to the Hartford Police 24 Station? 25

1 Yes, sir. 2 Who went with him when he was taken down there? 3 He was alone, in the back seat of my cruiser. 4 Q Did you have any conversation with him on the way 5 to the station? 6 A Yes. I did. 7 What was the substance of that conversation? 8 I advised him of his constitutional rights. 9 Q Is that by reading from a standard advice of 10 rights form? 11 A Yes, sir. 12 Q After being advised of his rights --13 THE COURT: Excuse me, Counselor. You can't 14 presume that everybody on the jury, even with the 15 TV, knows what he advised him. Suppose you ask 16 him what he advised. 17 BY MR. DABROWSKI: 18 Have you got your standard rights form with you? 19 I do not have it with me, no, sir. 20 Do you recall exactly what that form says? 21 I advised the defendant that he had a right to 22 remain silent; that anything he said could and will be used 23 against him in a court of law. I advised him that he could 24 have counsel; if he couldn't afford counsel one would be 25 assigned to him by the Court.

I advised him that he could have a phone call; that he could answer questions with his counsel present -- he didn't have to answer any questions, to any police officer.

That's the basics which was on the card.

Q After you advised him of his constitutional rights did he make any statement to you with regard to this gun?

A No, he didn't.

MR. CRAMER: Well, I object.

THE COURT: Maybe I should talk with counsel at the Bench.

(The following transpired at the Bench:)

THE COURT: I didn't want counsel to get into the question of did he make any statement to you, or did he refuse to make any statement to you, because he isn't obligated to make any statement.

MR. DABROWSKI: I understand that, your Honor, and I anticipate what the officer will testify to is that Mr. Kasianczuk did in fact make a statement; that he denied having anything to do with the gun. He didn't know anything about it.

That is not a refusal to make a statement;
it is a statement. There is a distinct difference
between claiming a right to an attorney or refusing
to make a statement in the absence of an attorney,

or for whatever reason -- a distinct difference between that and saying "I don't know anything at all about the gun."

MR. CRAMER: That is true, but that is not what his answer was. I think he said he did not say anything in response to the advice.

THE COURT: That is the impression I got. He said he didn't say anything. He isn't obligated to say anything.

MR. CRAMER: I think there are two cases, two Supreme Court cases of two years ago --

THE COURT: There is no problem about that.

MR. DABROWSKI: Nor do I disagree with that, your Honor. I'm sure that -- I talked with this witness before -- I'm sure that that was an unintended answer on his part. That is not in fact what happened, as I understand it. He did make a positive statement: "I don't know anything about the gun."

THE COURT: I just wanted you to be aware that you are getting into that area. As long as you know your witness and what he is going to say, if he did say something -- did he make any response about the gun? And if the answer is yes, that he had nothing to do with it -- which, I

suppose, is protected, too.

MR. CRAMER: In light of his answer I would move for a mistrial, because he has already brought to the jury's attention the fact that he exercised his Fifth Amendment rights.

MR. DABROWSKI: That's not true. I don't think he said he exercised his Fifth Amendment rights. I can clarify that.

THE COURT: The motion for mistrial is denied.

MR. CRAMER: Could I have a cautionary instruction to the jury then, to disregard that?

THE COURT: Yes, I will.

(The following transpired in open court:)

THE COURT: I just want to caution the jury, in response to the answer given by the witness, that he didn't say anything -- actually a defendant does not have to say anything, and that cannot be used against him. So the mere fact he said nothing, the jury should not in any way construe that to be an indication that he failed to cooperate, or failed to respond. Because he is under no obligation to. And that should not be considered against him in any manner, concerning his guilt or innocence in this matter.

Proceed.

BY MR. DABROWSKI: Q After being advised of his constitutional rights 2 3 did you ask Mr. Kasianczuk whether he knew anything about 4 this gun? 5 A Yes, sir. Did he respond to your question? 6 7 A Yes, he did. 8 Q What did he say? 9 A He said "I don't know what you are talking about." 10 Did he say anything else? I asked him again. I said "What were you going to 11 do, blow up Mancini?" 12 13 Q What did he say? 14 He said "I don't know what you are talking about." He denied that he ever saw or knew anything at 15 16 all about it? 17 MR. CRAMER: Objection. That's a leading 18 question. 19 MR. DABROWSKI: Nothing further, your Honor. 20 CROSS EXAMINATION BY MR. CRAMER: 21 Q As I understand the sequence of events, Officer 22 Murphy, you went from where you were stationed in your car, 23 and you drove to the Royal Cafe? 24 Yes, sir. 25 Q And this was as the result of a dispatch that you

App. 20

1	MR. DABROWSKI: The Government calls Samuel
2	Bernard Sykes.
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7	SAMUEL B. SYKES, appearing
	as a witness, being duly sworn, testified as follows:
8	THE CLERK: Would you state your full name?
9	THE WITNESS: Samuel B. Sykes.
10	THE CLERK: Your address, Mr. Sykes?
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12	THE WITNESS: 39 Wadsworth Street, Hartford,
13	Connecticut.
14	DIRECT EXAMINATION BY MR. DABROWSKI:
15	Q Mr. Sykes, how are you employed?
16	A I'm an officer down at the Hartford National,
17	777 Main Street, now.
18	Q The Hartford National Bank and Trust Company?
19	A Yes.
20	Q Are you about to terminate that employment for any
21	reason?
22	A Yes, I am.
23	Q What is that reason?
24	A Well, I'm going in the Army. I'm going back in
25	starting about a week or a week and a half from now,

into the bank. I make sure it is okay, like that. THE COURT: You provide a protective service 2 3 for the bank? THE WITNESS: Yes. 4 5 BY MR. DABROWSKI: Q Do you know the defendant in this case, Chester 6 7 Kasianczuk? A Yes, I do. Q How well do you know him? A I would say approximately a year and a half to 10 11 two years now. Q Is he a social acquaintance of yours, a business 12 13 acquaintance? 14 Social. Α 15 Q Now, in March of 1976 did you own a 1969 Pontiac 16 Firebird, blue, with registration number PG4947? Did you 17 own that car in March of 1976? 18 Yes, I did. A 19 Specifically directing your attention to March 26. 1976, did you have that car in your possession on that date? 20 21 A No, I didn't. 22 Why didn't you? What happened to it? 23 A Well, Chester had a dune buggy that I wanted to 24 trade my car for, title for title. And he was fixing up

mine for approximately one week. And he is a good mechanic.

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1 the dune buggy for my car. 2 3 4 5 A Yes. 6 7 8 front seat of your car. 9 10 A Yes. 11 Q 12 A 13 14 15

And that's what I wanted him to do. We were going to trade

To the best of your recollection you gave him your car, gave it to him in the sense that he took possession of it, about a week prior to March 26th?

Showing you Government's Exhibit 2, which is a sawed-off shotgun, this was found by police officers in the

Have you ever seen that gun before?

Where have you seen it?

At the court, at the last court thing you had.

Other than incident to court proceedings, or your appearance in the grand jury, have you ever seen that gun?

No, never. A

Was that gun in your car when you gave the car to Chester on or about March 20th, 1976?

A No.

Q Do you know whose gun that is?

I have no idea. A

Did you take possession of your car, or did you have it temporarily in your possession at any time between, say, March 20th and March 26th?

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1	PEGGY L. PRENTICE, appearing
2	as a witness, being duly sworn, testified as follows:
3	THE CLERK: Would you state your full name?
4	THE WITNESS: Peggy Lucille Prentice.
5	THE CLERK: Your address?
6	THE WITNESS: I just came from Dixon,
7	Tennessee.
8	THE COURT: Read it back, so that the jury
9	can hear her name and her address.
10	(Previous testimony read back.)
11	THE COURT: What is your street address in
12	Dixon, Tennessee?
13	THE WITNESS: Route 6, Box 223.
14	THE COURT: You are going to have to speak
15	louder, Miss Prentice, because the juror way down
16	at the end can't hear you. It is as if you
17	weren't here. You will have to speak up.
18	DIRECT EXAMINATION BY MR. DABROWSKI:
19	Q Miss Prentice, are you employed?
20	A No, I am not.
21	Q How old are you?
22	A Twenty.
23	Q How far through school have you been?
24	A Ninth grade.
25	Q Have you ever been employed?

1 No, I didn't. A MR. DABROWSKI: No further questions. 2 CROSS EXAMINATION BY MR. CRAMER: 3 4 I am going to ask you some questions concerning 5 the events of that night, that Mr. Dabrowski was 6 questioning you about. 7 You are in the back seat of the car -- whose car 8 was that? 9 Bernard Sykes'. A 10 Q Who was in the driver's seat? 11 Mary Beth Metz. A 12 And was Chester in the car? Q He was in the passenger side. 13 A Okay. How did you happen to get into that car? 14 Q I had come out of the Royal Cafe, closing time. 15 A What time approximately was that? 16 Q Around one o'clock. 17 A 18 Q Okay. And I had seen the car, so I went over to the car. 19 20 I was going to ask them for a ride home. 21 "Him" being Chester? Q 22 Chester and Mary Beth. 23 What happened then? Q 24 I got in the car, and I started talking to Mary A 25 Beth.

He came up to the car. Did he say something to anybody? 2 He asked me something like do I need a ride home, 3 or do I want a ride home. I said I had a ride. About how long after this did the police come? Q 5 I can't really tell. 6 Was it within seconds or minutes? 7 Probably a minute or a minute and a half. It 8 wasn't that long. 9 Would it be fair to say that your mind was 10 preoccupied with Pete Chasse that night? 11 Definitely. MR. CRAMER: I have no other questions from 13 this witness at this time, your Honor. I 14 subpoenaed her myself, and I may call her at some 15 subsequent time. 16 REDIRECT EXAMINATION BY MR. DABROWSKI: 17 Any time that you were in the car, any time that 18 evening, did you see either Mary Beth or Chester 19 Kasianczuk handling shotgun shells? 20 No, I didn't. 21 Now, in preparing for your testimony here have you 22 had conversations with Mr. Cramer, counsel for Mr. Kasianczuk? 24

Yes, I did.

A

25

1	Q	Who went to the Emerald Cafe?
2	A	Mr. Kasianczuk, me, and Peggy Prentice.
3	Q	That is the same Peggy Prentice who was called
4	earlier to	o testify?
5	A	Yes.
6	Q	What was the seating arrangement at that time?
7	A	Chester was driving; I was in the passenger seat,
8	and Peggy	was in the back seat.
9	Q	And what time did you arrive at the Emerald Cafe?
10	A	Seven o'clock, 7:30.
11	Q.	And did the three of you enter the cafe?
12	A	Yes, we did.
13	Q	What did you do?
14	A	We were socializing.
15	Q	Did you drink?
16	A	Yes.
17	Q	And talk?
18	A	Yes.
19	Q	Did there come a time when you left the Emerald
20	Cafe?	
21	A	Yes.
22	Q	Did you leave by yourself?
23	A	Yes.
24	Q	Where did you go?
2:5	A	Back to my house.

1	V	And now did you go back there?
2	Α	The car.
3	Q	Sykes' car?
4	А	Yes.
5	Q	You had the keys?
6	A	Right.
7	Q	Okay. What was the purpose of going back to the
8	house?	
9		MR. BROWN: Can I have a second, your Honor?
10		(Pause.)
11		THE WITNESS: I refuse to answer the question
12		on the ground it might incriminate me.
13	BY MR. CRA	AMER:
14	Q	Do you see Government Exhibit Number 2, the
15	sawed-off	shotgun?
16	A	Yes, I do.
17	Q.	Have you ever seen this gun before today?
18	A	I refuse to answer on the grounds it might
19	incrimina	te me.
20		MR. CRAMER: Can I have a moment to speak
21		with my investigator, your Honor?
22		(Pause.)
23	BY MR. CRA	AMER:
24	Q	Do you recall speaking to me about this case?
25	A	Yes, I do.

Q A few weeks ago? 1 Yes. I do. 2 3 And do you recall discussing all the facts of the case at that time? 4 5 Yes, I do. A Do you remember that that was discussed in my 6 7 office? 8 Yes, I do. 9 Do you remember that there was a third party 10 present at that time? Yourself, me and a third party? 11 Yes, yes. That third party is Mr. Conte, sitting in the 12 front bench there? 13 14 Yes. Do you recall I asked you before you spoke to me 15 if I could make a tape recording of your conversation? 16 A Yes. 17 18 Q And you gave me permission to do that? 19 Yes. A That was done voluntarily? 20 Q 21 A Yes. 22 When you got back to the Emerald Cafe that night 23 was Chester and Peggy Prentice still there? 24 A Yes. 25 Q. Did you stay there a while longer?

1	A Yes.
2	Q How much longer did you stay there?
3	A Until about ten o'clock.
4	Q Okay. And did you leave at that time?
5	A Yes.
6	Q Where did you go?
7.	A To the Royal Cafe.
8	Q Who was with you?
9	A I was driving, Chester was in the passenger seat,
10	and Peggy Prentice in the back.
11	Q Okay. And to your knowledge was this weapon in
12	the motor vehicle at that time?
13	A I refuse to answer that question on the grounds
14	it might incriminate me.
15	Q You say it might incriminate you?
16	A Right.
17	Q You are not refusing to answer on the grounds that
18	it might incriminate Mr. Kasianczuk, are you?
19	A No.
20	Q In fact, you have no reason to believe that your
21	answer to that question would incriminate Mr. Kasianczuk,
22	do you?
23	A No.
24	Q Now, at that point in time, when you were driving
25	to the Royal Cafe, to your knowledge did Mr. Kasianczuk

know if this weapon was in the car or not? 1 I withdraw, on the line it might incriminate me. 2 When you got to the Royal Cafe did Peggy Prentice 3 get out of the car? 4 A Yes. 5 Where did she go? Q 6 Inside the Royal. A 7 Q Do you know for what purpose? 8 Yes. A 9 What was the purpose? Q 10 To get Peter Chasse. 11 Peter Chasse; is that her boyfriend? Q 12 A Yes. 13 She was concerned about him? Q 14 Yes. 15 Did you go out of the car at the Royal Cafe? Q 16 At one point, yes. A 17 Q What did you do? 18 I went inside the Royal. A 19 For what purpose? Q 20 To avoid questioning from Chester. A 21 Avoid questioning from Chester? Q 22 Yes. A 23 Q What was Chester questioning you about? 24 I won't answer the question on the ground it might

1	А	Yes.
2	Q	Did something unusual happen earlier that day?
3	А	Yes.
4	Q	What was that?
5	А	I got to the hospital and found out I was
6	pregnant.	
7	Q	And who was the father of that child?
8	A	Chester Kasianczuk.
9	Q	Now, at this time where was Chester living?
10	A	With Rita Gaginer.
11	Q	With Rita Gaginer? Where were they living?
12	A	37 Grant Street.
13	Q	You were living elsewhere?
14	A	Yes.
15	Q	Do you feel any hostility toward Rita Gaginer?
16	A	I'd say maybe a little bit of fear jealousy.
17	Q	Fear?
18	A	Fear, jealousy, at that point, yes.
19	Q	Before that date did you have any fights with
20	Rita Gagi	ner?
21	A.	Yes.
22	. 6	Physical fights?
23	A	Yes.
24	Q	In fact, one occurred shortly before the day you
25	were foun	d pregnant?

1	A Yes.
2	Q And this was one of the reasons you were afraid of
3	her?
4	A Yes.
.5	Q And in these physical fights did she do physical
6	harm to you? Did she hit you?
7	A Yes.
8	Q But you were able to take care of yourself in
9	these fights?
10	A Yes.
11	Q But this night you knew you were pregnant?
12	A Right.
13	Q And is it fair to say that you had the concern
14	of your unborn child also at that point?
15	A Yes.
16	Q This woman, Rita Gaginer, does she often
.17	frequent the Royal Cafe?
18	A Yes.
19	Q So you knew you were going there that evening, and
20	that you might run into her?
21	A Yes.
22	Q Would you say it was a strong probability?
23	A Yes.
24	Q And did you think if you ran into her even in a
25	public place that there might be some physical violence

1	between	the two of you?
2	A	Yes.
3	Q	Did you think she might attack you?
4	A	Yes.
5	Q	You wanted to protect yourself, didn't you?
6	A	Yes.
7	Q	You thought perhaps if you scared her she wouldn't
8	attack y	ou?
9	A	Yes.
10	Q	One way to scare her would be to have a gun with
11	you?	
12	A	I refuse to answer that on the grounds it might
13	incrimina	ate me.
14	Q	To your knowledge, you know Chester pretty well?
15	A	Yes.
16	Q	Did he have any animosity toward anyone who
17	frequente	ed the Royal Cafe?
18	A	No.
19	. Q	Not toward you?
20	A	No.
21	Q	Toward Rita?
22	Α	No.
23	Q	And not toward Sal Mancini?
24	A	No.
25	Q	Or Richard Shepard?

1	A	No.
2	Q	But you had animosity toward somebody who
3	frequents	the Royal Cafe?
1	A	Yes.
5	Q	Rita Gaginer?
6	A	Yes.
7	Q	Would it be fair to say you were pregnant by
8	Chester,	and your dislike for Rita increased?
9	A	Yes
10	Q	You go back in the car, and do you and Chester
11	leave the	Royal Cafe?
12	A	Yes.
13	Q	Okay now, before you left what kind of condition
14	was Chest	er in, in relation to drinking?
15	A	He was pretty drunk.
16	Q	Pretty drunk?
17	A	Yes, he was drunk.
18	Q	Would you say he was aware of what was going on
19	around him	m?
20	. А	To a certain extent.
21	Q	Was he talking coherently?
22	A.	To a certain extent.
23	Q	Was he rational in his thinking?
24	Α.	You'd have to explain that further, "rational".
25	Q	Was his thinking processes as clear then as they

1	Q	You had to pick up Jeggy Prentice?
2	Α	Yes.
3	Q	This is the same Royal Cafe that Rita Gaginer was
4	at?	
5	A	Yes.
6	₽ Q	And she's the same woman that you have a dislike
7	and a ha	tred for?
8	Α	Yes.
9	Q Q	The same woman you had fights with before?
10	A	Yes.
11	Q	You stated that when you let me get this
12	straight	. You drove to the Dobbs House, or the Steak &
13	Eggs Hou	se, and you were in the driver's seat?
14	A	Yes.
15	Q	Chester was in the front passenger seat?
16	A	Right.
17	. · · Q	Just the two of you?
18	Α .	Right.
19	Q	You expected that when you left that you would be
20	in the pa	ssenger seat?
21	A	Yes.
22	· Q	And Chester would be driving?
23	A	Yes.
24	Q	Why did you expect that?
25	A	Because I thought I'd scher him up enough to have

1	A	No.
2	Q	He might have, but you don't know? You don't know?
3	A	I'm not sure.
4	Q	Now, before the police came did you see any
5	weapon in	Chester's hands?
6	A	Yes.
7	Q	Okay. About how many seconds or minutes before
8	the police	e came did you see it in Chester's hands?
9	. А	Five, twenty I don't know.
10	Q	Seconds?
11	A	Seconds.
12	Q	Had you ever seen this weapon in his hands before
13	that even	ing?
14	A	No.
15	Q	Have you ever seen it in his possession at any
16	other tim	e?
17	A	No.
18	Q	Were you seeing him on a daily basis at that time?
19	A	Yes.
20	Q	And you never saw the weapon in his possession?
21	A	No.
22	Q	Did he ever discuss a shotgun with you?
23	A	No.
24	Q .	Did he ever discuss any guns with you?
25	A	No.

Would it be fair to say you were pretty intimate with Chester? 2 Yes. 3 He discussed things with you openly? A Yes. 5 And he never discussed this weapon? 6 Right. 7 You say you saw it in his hands a few seconds 8 before the police came? 9 A Right. 10 Did he say anything when you saw it in his hands? 11 Yes, he did ask me something. 12 What was he saying? 13 I refuse to answer on the grounds it might 14 incriminate me. 15 Did you respond to what he said? 16 No. 17 MR. CRAMER: Would your Honor direct that she 18 answer that question? I don't know what he said 19 to her, how it can incriminate her. 20 THE COURT: The point is well-taken. What he 21 said to her wouldn't incriminate her. Only if it 22 incriminates her. 23 THE WITNESS: He asked me what was it, where

did it come from, why was it there? And then he

told me -- he said we got to get rid of it. He didn't know where it came from. 2 3 BY MR. CRAMER: From the tone of his voice did he seem sincere in 5 what he was saying? He was rather shocked that it was there. 6 7 Q. Did you see what he did with the weapon at that 8 time? 9 Yes. A What did he do with it? 10 Q Put it back under the seat, and told me to start 11 the car. 12 Was that after he said "We got to get rid of it"? 13 Q Yes. A 14 Now, did there come a point earlier in that 15 evening when some shotgun shells were discovered? 16 Yes. 17 A 18 Q What point in the evening was that? At ten o'clock. 19 A 20 Q Okay. How did that come about? 21 I refuse to answer that on the grounds it might A incriminate me. 22 23 Well, did Chester discover the shotgun shells 24 about ten o'clock?

25

A

Yes.

1	Q	Where did he discover them?
2	A	In the glove compartment.
3	Q	The glove compartment of Sykes' car?
4	A	Right.
5	Q	Were you in the car at that time?
6	A	Yes.
7	· Q	Okay. Did you see him discover them?
8	A	Yes.
9	Q	Okay. Were they in a bag or loose, or what?
10	A	They were in a bag.
11	Q	Did he say anything when he discovered them?
12	A	Yes.
13	Q	What did he say?
14	A	"What are these? Where did they come from?"
15	Q	He directed those questions to you?
16	A	Yes.
17	Q	Did he at that time appear obviously shocked,
18	surprised	!?
19	А	Yes.
20	Q	Did you respond to his question?
21	A	No.
22	Q	And did he continue on in that subject?
23	A	Yes.
24	Q	Well
25	A	I got out of the car.

1	A	To keep them away, I guess, from either me, you
2	know g	et rid of them.
3	Q	To your knowledge had Chester ever seen those
4	shells be	fore that moment he discovered them?
5	. А	No.
6		MR. CRAMER: I have no other questions at
7		this time.
8	CROSS EXA	MINATION BY MR. DABROWSKI:
9	Q	Do you know Peter Chasse?
10	A	Yes.
11	Q	When is the last time you saw Peter Chasse?
12	A	Before I went to Tennessee.
13	Q	Did you see him on Monday, two days ago?
14	A	Not to my knowledge, no.
15	Q	Do you know where he is today?
16	Α	No, I have no idea.
17		MR. DABROWSKI: I'm showing the witness a
18		document, a five page document, captioned
19		"Peter Chasse, the Testimony of Peter Chasse
20		Before a Grand Jury on April 14, 1976."
21	BY MR. DA	BROWSKI:
22	Q	Have you ever seen that?
23	A	I don't think so, no.
24	Q.	Did you have a conversation within the last couple
25	of days	with Mr. Cramer?

1	MARIO G. CONTE, JR., appearing
2	as a witness, being duly sword testified as follows:
3	THE CLERK: Will you state your full name?
4	THE WITNESS: Mario G. Conte, Jr.
5	THE CLERK: Your address, Mr. Conte?
6	THE WITNESS: Granby, Connecticut.
7	DIRECT EXAMINATION BY MR. CRAMER:
8	Q Mr. Conte, how old are you?
9	A Thirty-three.
10	Q And where do you work?
11	A I'm a student at the University of Connecticut,
12	School of Law.
13	Q And what did you do prior to that?
14	A I was an Air Force Fighter Pilot for six years.
15	Q Have you ever met the woman who previously
16	testified, Mary Beth Metz?
17	A Yes, I have.
18	Q Do you recall where that meeting occurred?
19	A Yes, it was in the Public Defender's Office here
20	in this building, Friday, about a week and a half ago.
21	Q How long ago?
22	A I would think it is about a week and a half now.
23	Q Now, do you recall the purpose of that meeting?
24	A Yes, I do.
25	Q What was the purpose?

MR. CRAMER: We have an instruction which we hope you will give, based upon fleeting possession; somebody finding something who intends to get rid of it, and only has it for a brief period of time, that it is not possession under the statute.

If you don't give that instruction, obviously we are going to lose.

(The following transpired in open court:)

THE COURT: It is now 3:30. We will take a short recess before proceeding.

(In the absence of the jury.)

THE COURT: Are counsel ready to proceed?

MR. DABROWSKI: Yes.

MR. CRAMER: Yes, your Honor.

THE COURT: Call the jury, please.

(In the presence of the jury.)

THE COURT: Read back the last question.

(Previous question read back.)

THE COURT: The Court is going to allow the testimony. The Court will withdraw its previous ruling, and allow him to testify as an exception to the hearsay rule.

BY MR. CRAMER:

25

Q Mr. Conte, during that meeting with Miss Metz and

1	Q Did she say she said anything to him about her
2	being pregnant?
3	A I don't believe so.
4	MR. DABROWSKI: Your Honor, counsel is
5	continuing to lead his witness.
6	THE COURT: The point is well-taken. Let him
7	tell you.
8	BY MR. CRAMER:
9	Q Okay. Did she tell you that she left the Emerald
10	at a point in time?
11	MR. DABROWSKI: Same objection. The exact
12	same question.
13	MR. CRAMER: I withdraw the question.
14	BY MR. CRAMER:
15	Q What did she say about her activities after she
16	left the Emerald?
17	A They left the Emerald and went to the Royal Cafe.
18	Q Who was "they" by her statement?
19	A She and Chester.
20	Q Okay. What did she say happened there?
21	A They went to the Royal. Apparently she was going
22	to seek out Rita Gaginer.
23	Q For what purpose, did she say?
24	A She said that she was going to kill her.
25	Q Did she say why she was going to do that?

1	A Apparently she was
2	THE COURT: Not "apparently."
3	THE WITNESS: I'm sorry. She was angry,
4	and the had had prior hostilities with Rita
5	Gaginer, and felt that the time had come.
6	BY MR. CRAMER:
7	Q Okay. Did she say whether or not she found Rita
8	Gaginer at the Royal?
9	A She didn't find her at the Royal.
10	Q What did she say she did then?
11	A They left the Royal, and
12	Q I'm sorry. Before they left the Royal was there
13	any discussion about shotgun shells?
14	MR. DABROWSKI: Objection. He is continuing
15	to lead the witness.
16	MR. CRAMER: I withdraw the question.
17	Q Did anything happen before they left the Royal?
18	A Yes.
19	MR. DABROWSKI: Objection. It is not a
20	question did anything happen. What did she say?
21	B) MR. CRAMER:
22	Q What did she say happened before they left the
23	Royal?
24	A Before they left the Royal Cafe the defendant
25	discovered the shotgun shells in the car. And at that point

A He was very drunk.

Q Where did she say she proceeded after she left the Royal at ten o'clock?

A They went to the Dobbs House for food, and an attempt to sober him up.

Q Okay. What did she say happened at the Dobbs House, if anything?

A At the Dobbs House the defendant kept falling asleep, due to his condition. She was giving him coffee, and, I think, food.

At some period of time while they were at the Dobbs House she exited the Dobbs House, went to the car, took the shotgun from the trunk of the car, and placed it on the passenger -- under the passenger seat.

Q Did she tell you why she did that?

A Yes. The reason that she put it under the passenger seat was that she felt that she could sober up the defendant, and when he was sober he would drive.

Therefore, she would be in the passenger seat and have access to the shotgun.

Q What did she say happened, if anything, at the time they left the Dobbs House?

A When they left the Dobbs House she went under the assumption that the defendant would drive. He made objection to that, and she ended up driving the car, with

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A She exited the car, went to the cafe, got Peggy Prentice, and came back to the car.

Q What happened then?

A She was talking -- I believe she was talking with Peggy Prentice concerning a Mr. Chasse, and that is when Richard Shepard, in that period of time Richard Shepard walked up to the car, took the steps backward, again approached the car, and the police came.

And in that period of time she was also saying that the defendant had questioned her again about the gun, and wanted to get rid of the gun.

Q Did she say how he wanted to get rid of the gun?

A I think she said he wanted to throw it in the Connecticut River, or bury it in the Connecticut River.

Okay. Did she say she ever told the defendant -
MR. DABROWSKI: I move to strike the last

answer. If we could have it read back I believe
he said "I think she said".

THE COURT: Do you recall what she said?

THE WITNESS: Yes, your Honor. She said something concerning getting rid of the gun, throwing it in the Connecticut River.

MR. DABROWSKI: Are those the exact words?

THE COURT: Is that substantially what she said?

1	Q What was that? Tell the ladies and gentlemen of
2	the jury what happened.
3	A That's when I kicked something under the seat of
14	the car.
5	Q Okay.
6	A And then I reached down and picked it up.
7	Q What was that that you kicked?
8	A A sawed-off shotgun.
9	Q To the best of your recollection is Government's
10	Exhibit 2 what you found under the seat of the car?
11	A That looks like it, yes.
12	Q Now, what did you do when you kicked this object?
13	A I picked it up.
14	Q How did you pick it up?
15	A I reached down in the seat and picked it up,
16	where it was.
17	Q What did you do with it? Did you put it in one
18	hand, or two hands?
19	A I picked it up, put it to the light, to see what
20	it was.
21	Q In your lap, or next to your chest, or where?
22	A When I picked it up and put it to the light it was
23	right about here (indicating), because it was dark in the car.
24	Q Was Pete Chasse looking into the car?

I'm not sure. I was looking at the gun.

Q Did you say anything to Pete Chasse? No, I didn't. A 2 Now, was it after you discovered the gun that 3 Pete Chasse left, or before? 4 A After. 5 You don't know whether he saw the gun or not? 6 No, I don't. 7 Do you recall if anything was said to him by you, 8 or he to you? 9 I asked him if he wanted to go out to eat. 10 I see. Now, when he left was anyone else coming 11 up to the car? 12 Yes. 13 A Who was that? 14 Rick. 15 Okay. Could you describe the circumstances 16 leading up to his approaching the car? 17 A Well, as Pete was leaving Rick was right there. 18 Q Okay. What did Rick do? 19 Right next to him, you know, coming past him. A 20 What did Rick do? Q 21 He had come up to the car, and he was looking in 22 the window while I was looking at the gun. And he put his 23 hands up. I said "Hey, I just found it, man." I put it 24

back under the seat.

1	Q You said that to him?
2	A Right.
3	Q What did he do when he looked in the car?
4	A When he first looked in the car he put his hands
5	up, you know. I told him I just found it. I put it under
6	the seat, and he come over to the car and started talking.
7	Q Before he came over did you say anything about
8	this gun that you discovered to anybody? Did you make any
9	remarks?
10	A No.
11	Q You didn't say anything to Mary Beth about the
12	gun?
13	A That was after he come over.
14	Q What did you say?
15	A I asked her where how did it get there? Whose
16	was it?
17	Q Did you say anything else?
18	A I told her we got to get rid of it.
19	Q Okay. And did you put the gun underneath the car
20	then, or was it before underneath the seat, I'm sorry?
21	A Before I asked her.
22	Q When you say get rid of it, what do you mean?
23	A I was going to dump it in the river.
24	Q Why would you why wouldn't you intend to bring
25	it to the police?

A Well, I had one conviction in Hartford before, and I just can't see walking into a police station with a 2 sawed-off shotgun. I didn't think at the time to do it that 3 way. It was my intention to get rid of it. 4 Were you still a little drunk at this time? 5 Yes. 6 About how long did you have the gun in your hands 7 before you put it under your seat? 8 I picked it up; I looked at it. And I put it back 9 under the seat. Less than 30 seconds. 10 That is an approximation? 11 Α Yes. 12 And how long after you put it underneath the seat 13 Q did the police come? 14 Less than a minute. 15 Now, there was some testimony earlier concerning 16 Q 17 your arrest in this particular case. Do you recall hearing 18 that testimony? 19 Yes. Okay, and what town were you arrested in? 20 Q 21 Coventry, Connecticut. 22 Q By whom? 23 FBI agents. A 24 Some Government agents? Q

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Yes.

objection.

THE COURT: The Court is going to overrule the objection, for the reason that an issue has been raised as to whether or not this story told by Mary Beth Metz was one that was conceived within the past week or two.

Now, if there is evidence that the same story had been told last April or May, then at least for that purpose it would be admissible.

Proceed.

BY MR. CRAMER:

Q You may answer the last question, Miss Prentice.

THE COURT: Have it read back to her.

(Question read back.)

THE WITNESS: She told me that she had taken the gun from James Deleria's possession when he had died; that she wanted it for protection against Rita Gaginer.

BY MR. CRAMER:

Q Did she say anything about having the gun on the night that Chester was arrested?

A Yes.

Q What did she say?

A She told me that she had taken the gun and put it in the car for protection against Rita Gaginer, because she

App. 53

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Do you recall ever a particular incident where

Yes.

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(Court reconvened at 1:05 p.m., at which time the Court charged the jury as follows:)

THE LOUIS: Ladies and gentlemen of the jury, now that you have heard the evidence and the arguments of counsel, the time has come to instruct you as to the law governing the case.

Although you as jurors are the sole judges of the facts, you are duty bound to follow the law as stated in the instructions of the Court, and to apply the law to the facts as you find them, from the evidence which is before you.

You are not to single out one instruction of the Court alone as stating the law, but you must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that stated or given in the instruction of the Court.

Now, the indictment is this piece of paper that I hold in my left hand. You will have it with you in the jury room. It is but a formal method of accusing the defendant of a crime. It is not evidence of any kind against the accused in

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this case, and it does not create any presumption, or permit any inference of guilt.

The law presumes a defendant to be innocent of crime. Thus, at the moment the defendant begins the trial he stands before you free from any bias or prejudice or burden arising from his position as the accused.

So far as you are concerned, he then was innocent, and continues innocent throughout the trial and during the deliberations of the jury, and is overcome when, and only when, his guilt is established beyond a reasonable doubt.

This presumption requires that if a piece of evidence offered is capable of two reasonable constructions, one of which is consistent with innocence, it must be given that construction.

Whether the burden of proof resting upon the Government is sustained depends not upon the number of witnesses, nor the quantity of the testimony, but upon the nature and the quality of the testimony.

In order to convict one accused of crime, the jury must be satisfied beyond a reasonable doubt of the defendant's guilt. A mere preponderance of the evidence is not sufficient. And if a

reasonable doubt does exist in the minds of the jury, then they must acquit the defendant.

If the evidence justifies, in your judgment, the conclusion that the accused is guilty, so as to exclude every other reasonable doubt as to the guilt of the defendant, then of course you will find him guilty.

Now, this term "reasonable doubt." It means just what the term implies. By "reasonable doubt" I do not mean to be understood as stating that the defendant must be found guilty beyond all doubt whatever, but beyond a doubt founded in reason, and arising from the evidence.

Reasonable doubt is a doubt arising from the evidence, or from a lack of evidence, after consideration of all of the evidence in the case. It is not a vague, speculative, imaginary something, but just such a doubt as would cause reasonable men and women to hesitate to act upon it in matters of importance to themselves.

Reasonable doubt means such doubt as will leave the juror's mind, after a candid and impartial consideration of all of the evidence, so undecided that he or she is unable to say that they have an abiding conviction or assurance of the

defendant's guilt.

If after you have carefully considered and weighed all the evidence in this case, in the light of the law as the Court will have given it to you, you have a firm, full and abiding conviction that the defendant is guilty, as charged in the indictment, then this guilt has been established beyond a reasonable doubt.

But, if you do not have a full, firm and abiding conviction, then guilt has not been established beyond a reasonable doubt, and you would then acquit the defendant.

In order to convict one accused of crime, all of the elements of that crime must be proven beyond a reasonable doubt. Therefore, until the jury concludes that all the material elements of said crime have been committed by the defendant, and said elements have been proven beyond a reasonable doubt, the jury would bring in a verdict of not guilty.

Now, this word "proved." In the remainder of what I have to say to you in this jury charge I shall use the word "prove" or "proved" with reference to the burden which rests upon the Government. I shall speak to you of your finding

various facts or elements in the case.

Throughout you will understand when I say the Government has to prove a fact to you, I mean that it has to prove to you that fact with that degree of proof I have just defined: that is, beyond a reasonable doubt, even though I may not repeat those exact words.

When I say you must find a fact, I mean you must find it proven beyond a reasonable doubt, even though I simply use the word "find."

Now, there are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

Now, as a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant, the jury must be satisfied beyond a reasonable doubt from all of the evidence in the case.

Now, "inference." The term "inference" is a deduction or conclusion which reason and common

sense lead the jury to draw from facts which you find to have been proven.

In arriving at your decision, you, the jury, may draw inferences from those facts which are either admitted or stipulated to by counsel, or those facts which you find to have been proven.

However, no inference is reliable which is drawn from facts which are themselves uncertain. You, the jury, should not indulge in speculation or conjecture.

A presumption is a conclusion which the law requires the jury to make from a particular set of facts, in the absence of convincing evidence to the contrary.

A presumption continues in effect until overcome or outweighed by evidence to the contrary. But, unless so outweighed, the jury are bound to find in accordance with the presumption.

This defendant is presumed innocent unless you find beyond a reasonable doubt that he is guilty of the offenses with which he is charged -- or the offense with which he is charged.

Now, in the indictment, the defendant, Chester Kasianczuk, is charged in one count, which states as follows: "On or about March 26, 1976, in the

District of Connecticut, Chester Kasianczuk, the defendant herein, did knowingly possess a certain firearm, to wit: a Stevens 12 gauge shotgun" -- and it gives the serial number -- "with the barrel cut off to the length of nine and a quarter inches, and with an overall length of seventeen and three-eighth inches, which firearm had not been registered to him in the National Firearms Registration and Transfer Record, in violation of 26 United States Code, Section 5861(d) and 5871."

Now, the statute with which we are concerned reads in part, and I quote: "It shall be unlawful for any person to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Records."

The term "firearm" as used in this statute, is a word of art, having a special, legal meaning, as defined in the National Firearms Act.

It does not include every shotgun or every rifle or every handgun, but it does include a weapon made from a shotgun, if such weapon, as modified, has an overall length of less than 26 inches, or a barrel length of less than 18 inches in length.

Now, there are four essential elements

required to be proven in order to establish the offense charged in the indictment.

First, whether the weapon in question was a firearm within the language of the statute, described as a firearm, a sawed-off shotgun.

Second, that the weapon had not been registered to the defendant in the National Firearms Registration and Transfer Records;

And, third, that the weapon was possessed by the defendant;

Fourth, that the defendant's possession was knowing and willful.

With respect to the first element, the

Act includes within its meaning and definition
a weapon of such type as Government's Exhibit

Number 2, provided you find that it has a barrel

length of less than 18 inches, and an overall

length of which is less than 26 inches.

And in that respect you may recall the stipulation by counsel, that the barrel length was eight and a quarter inches, and the overall length was 17 and three-eighth inches.

Secondly, with regard to the second element, the defendant is not charged here with his failure to register the weapon. The question is simply

whether he possessed this firearm without it being registered to him in the National Firearms

Registration and Transfer Records.

If you find this weapon was the type required to be registered by the Act, and you further find that it was not registered to the defendant, then you have found the first two of the four elements.

As to the third element, the Government must prove beyond a reasonable doubt that the weapon was possessed by the defendant. What does the word "possession" mean, as applied to this statute?

The law recognizes two kinds of possession: actual possession and constructive possession.

A person who knowingly has direct, physical control over a thing at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, the possession is sole. If two or more persons share

actual or constructive possession of a thing, possession is joint.

You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

As to the fourth element, for purposes of this section of the National Firearms Act, knowingly simply means that the defendant was conscious of his possession of the weapon. And willfully means that the possession was voluntary and intentional.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake, or accident, or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake or accident, or other innocent reason.

Willfully -- an act is done willfully if
done voluntarily and intentionally, and with a
specific intent to do something which the law
forbids. That is to say, with bad purpose, either
to disobey or to disregard the law.

It is not necessary that a defendant must have been aware that the gun was unregistered, or even that he was aware that it was the type of weapon that should have been registered. Mere possession of an unregistered weapon is the crime that is charged.

It is for you, the jury, to determine whether or not all four of the elements of the crime charged have been proven by the Government beyond a reasonable doubt. On your findings shall , determine the guilt or innocence of the defendant.

Now, you as jurors are the sole judges of the credibility of the witnesses, and the weight which their testimony deserves.

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief.

Consider each witness' intelligence, motive and state of mind, and the witness' demeanor and manner while on the witness stand.

Consider also any relation which each witness may bear to either side of the case, and the manner in which each witness might be affected by the

verdict, and the extent to which if at all each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancy in the testimony of a witness or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon daily experience.

In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance, or an unimportant detail; whether the discrepancy results from innocent error or from willful falsehood.

All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt unfavorable testimony, unfavorable to the accused, should be considered with caution, and weighed with great care.

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements which are inconsistent with the witness' present

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testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars. And you may reject all the testimony of that witness, or give it such credibility as you may think it deserves.

when a defendant voluntarily offers an explanation or makes some statement tending to establish his innocence, and such explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. It is reasonable to infer that an innocent person does not ordinarily find it necessary to invent or fabricate a voluntary explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation of statements or statement points to a consciousness of guilt, and the

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significance, if any, to be attached to any such evidence, are matters for determination by you, the jury.

Now, there was some testimony by certain Alcohol, Tobacco and Firearms agents in this case. The testimony of a Government agent, or a law enforcement officer, is entitled to no special or exclusive sanctity, merely because it comes from a law enforcement officer.

A law enforcement officer who takes the witness stand subjects his testimony to the same examination and the same tests that any other witness does, and in the case of such officer you should not believe him merely because he's a law enforcement officer. You should evaluate his testimony as you do that of any other witness.

In considering the testimony of the witness, Richard Shepard, you will recall the testimony about his prior criminal felony record. I call your attention to the fact that the testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a prior felony; that is, of a crime punishable by imprisonment for a term of one year or more.

Prior conviction does not render a witness

incompetent to testify, but it is merely a circumstance which you may consider in determining the credibility of that witness.

It is solely within the province of the jury to determine the weight to be given to any prior conviction as impeachment of his or her credibility.

With respect to the defendant, Chester
Kasianczuk, who testified, you must carefully
consider his testimony. An accused person is not
obligated to take the witness stand in his own
behalf. On the other hand, he has a perfect
right to do so, as the defendant has done here.

In weighing the testimony he has given, you should apply the same principles by which the testimony of the other witnesses is tested, including those witnesses called by the Government.

In other words, an accused person, having taken the witness stand, is before you just like any other witness. He is entitled to the same consideration, and he may have his testimony measured in the same manner as that of any other witness.

You will recall that there was testimony introduced to the effect that the defendant, Chester Kasianczuk, had been arrested and been

convicted of a crime: possession of marijuana.

Such testimony of the commission of another crime, other than that charged in the present indictment on trial before this Court, is not admissible to prove the guilt of the accused in this particular case. The commission of such other crime by this accused can be considered by you for the sole purpose of weighing the issues of the defendant's credibility. In other words, his believability. Such evidence does not permit any inference that the accused committed the crime for which he is now on trial.

One further thing: the intentional flight of a defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not, of course, sufficient in itself to stablish guilt. But it is a fact which, if proved, may be considered by the jury in the light of all of the other evidence in the case, in determining guilt or innocence.

Whether or not the evidence of flight, or concealment shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury. In your consideration of the

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evidence of flight or concealment, you should consider that there may be reasons for this which are fully consistent with innocence. These may include fear of being apprehended, unwillingness to confront the police, reluctance to appear as a witness. But, let me suggest also that a feeling of guilty does not necessarily reflect actual guilt.

One or two other things I wanted to mention: there was a comment, or a slip of the tongue, I think -- the prosecutor in summing up made some reference to the factual testimony about the use of the gun, purportedly, by this Miss Metz, and made reference to something about -- I interrupted him, you will recall -- about the killing for Chester, referring to the defendant. You will recall the evidence; it isn't for me to recapitulate it, or bring it back and review it with you, but you will recall the evidence that there was allegedly some controversy between this Rita Gaginer and Miss Metz, and the reference was to her, and inferentially whether there was -whether she was jealous of losing her boyfriend or not, that is a side issue. But I don't think there was an reference to killing -- it referred to

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either protection from the violence of Rita Gaginer, or such other inference, if any, as you may see fit to draw.

One further comment: I would mention that counsel called to my attention that there was a reference at the end, concerning the defense counsel's using or taking advantage of using fabricated evidence. There was no indication that the defense counsel has in any way intentionally, willfully used any fabricated evidence. The reference by counsel, apparently, to the fact that he claimed Miss Metz's testimony was fabricated, and if somebody comes into the office and gives a story which is inconsistent with the facts, to the benefit of the defendant, as long as there is no known intention to deceive the Court or the jury, the defendant is, or the attorney is obligated to utilize the benefit of such witness' testimony.

against this defendant or against his counsel in any way by that reference. I want to clear it up; there is some ambiguity there about what could be drawn from it by the jury, as a conclusion, and I want to make it clear that no one should feel that they have in any way been prejudiced by either of

those two comments or slips of the tongue -- whatever you want to classify them.

You are the sole judges of the facts. It is a short case, and it has only been a day and a half, roughly, of evidence. You can ecall the facts probably better than the Court, and better than either counsel, among yourselves, in your discussion. So, you are the sole judges of the facts, and no one else.

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

Each of you must decide the case for yourself. But, do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But, do not surrender your honest conviction as to the

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weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room you will select one of your number as a foreman or forelady -- a kind of chairman, so to speak, of the jury -- who will preside over your deliberations and be your spokesman in court.

Should you have any questions that may arise concerning the evidence, or the law pertaining to the evidence, you are privileged to submit in writing a question to the Court, and the Court will then recall you and attempt to explain more fully the law as it applies to the facts.

Now, when you retire, as of the moment, do not proceed beyond selecting a foreman or forelady of the jury. Because either counsel, or both, may ask the Court to give further instructions to the jury on any phase of the jury charge which the Court has covered.

If the Court believes there is any merit to the request, the Court will recall you immediately and give further instructions to you concerning the matters requested.

On the other hand, when the clerk brings in to

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been offered here in court, you will then know that you may proceed to conclusion with your deliberations. The jury may now retire -- oh, yes, I'm glad you mentioned it, Mr. Bailiff.

Mr. Nicholas Kuchahik, I know it is kind of frustrating to have to be excused at this stage of the proceedings, when you have been with your fellow jurors for the last day and a half.

I am sure you understand the reason for it.

And the Court appreciates your cooperation and help in this case up to the present. And the Court will excuse you at this time.

I would ask, is there anything in the jury room that you have to get?

MR. KUCHAHIK: My coat.

THE COURT: Mr. Bailiff, why don't you do that, so that when the jury retires there will only be 12 people in the jury room at one time. Otherwise, it could be error to permit all 13.

I should mention to the jury, too, in the jury room I presume that no one has any law books, or anything of that kind to refer to. Because that too would be error in your deliberations.

I have never seen that happen, but it is a word of

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caution.

Very well, the jury may now retire.

(In the absence of the jury.)

THE COURT: Does counsel for the Government have any exceptions to note for the record?

MR. DABROWSKI: No, your Honor.

THE COURT: Counsel for the defendant have any exceptions to note for the record?

MR. CRAMER: Yes, your Honor, a number of them.

Firstly, the Court failed to instruct on the defendant's theory of the case, which was posed during Instruction IX from the defendant. And I think the Second Circuit case, United States versus Alfonso Perez, which is cited on Page 9 of the defendant's proposed instructions, considers the failure to so instruct to be error.

I believe it even holds it to be plain error -I may be wrong.

THE COURT: The Court -- and the record may show, for their review, in the Court of Appeals, if necessary, that the Court deliberately failed to present the defendant's theory of the case, for two reasons. First, it is the Court's opinion that only when the Court reconstructs the Government's case, then it must also reconstruct

in equal, similar vein, the defendant's claim.

And if the Court used your claim it would then have to recapitulate what the Government's claims were, including the testimony about his having cut off and made the gun, to start with, and all of the steps all the way through.

And the Court felt that in a short case, which was only a day and a half, the jury were well conscious of the facts. And counsel had made an adequate summation of those facts in his summation remarks, so that to elaborate on either side in this particular instance might well be prejudicial to either the Government or the defendant.

So the record may so disclose.

MR. CRAMER: The other objections are on the Court's instructing on constructive possession.

I don't think there was sufficient evidence for a finding of constructive possession in this case.

I cite United States versus Davis, 346, Federal Supplement 405. I have a copy of that. It is a case that I found most in point. The similarities are quite marked. Which, I think, considering the automobile was owned by Mr. Sykes, and was being driven by Miss Metz, is sufficient

to preclude a constructive possession instruction.

THE COURT: This was the car he was going to buy?

MR. CRAMER: In this case, your Honor?

THE COURT: Yes.

MR. CRAMER: You mean the present case?

THE COURT: Yes.

MR. CRAMER: I believe so. I believe that was the testimony.

THE COURT: In other words, Sykes was fixing up his dune buggy, and preparatory to selling or exchanging in whole or in part the two vehicles -- is that correct?

MR. CRAMER: I believe that was the testimony.

THE COURT: All right. Any other notations,

Counselor?

MR. CRAMER: I requested the Court to instruct on what I characterized as innocent instructions -- innocent possession, I am sorry.

Page 3. Roman numeral III.

The Court failed to instruct. I think that
in the Court's instructions to the jury the
inconsistent statements of the defendant were
singled out more particularly than the inconsistent
statements of other witnesses that may have been

called by defendant.

My next claim is that when your Honor made the correction near the end of his instructions, concerning the fact that the defendant's counsel did not knowingly use fabricated evidence, I think that should have been coupled with some sort of a cautionary word to the jury that the Court takes no determination whether that evidence was actually fabricated.

I think the way it was instructed to the jury,
that Mr. Cramer used fabricated evidence, but that
it -- I think it might have given the wrong
impression. There should have been an additional --

THE COURT: Didn't I say after that, Counselor, really it is for you the jury to determine in what respect the facts really were, and what they will really prove and disclose? I tried to do that to be even-handed, and avoid the very claim that you are presently making.

Very well.

MR. CRAMER: And the last objection is that I think one of the elements of the crime would be that this weapon was transferred to the defendant, and there was no instruction that there has to be a transferor and a transferee. That is 5851 of

Title 26. 1 THE COURT: The Court will let the jury charge 2 stand, as is. 3 Will counsel view the exhibits and the indictment? 5 (Pause.) 6 Do counsel find the exhibits and the 7 indictment in order to go to the jury room? 8 MR. CRAMER: Yes, your Honor. 9 MR. DABROWSKI: Yes, your Honor. 10 THE COURT: The Clerk will deliver them and 11 report back. 12 (Pause.) 13 THE CLERK: The jury has the exhibits and the 14 indictment, your Honor. 15 One of the jurors has a question about the 16 17 charge. THE COURT: Nothing further, the Court will 18 stand in recess. 19 20 (Recess.) (Court reconvened at 2:05 p.m.) 21 (In the absence of the jury.) 22 23 THE COURT: The question submitted by the jury is as follows: "We request clarification of 24 25 a statement included in the Court's charge to the

jury. This has to do with what was said or instructed relative to the purpose and/or intent of the possession."

Call the jury, please.

(In the presence of the jury.)

THE COURT: The question submitted reads:

"We request clarification of a statement included
in the Court's charge to the jury. This has to do
with what was said or instructed relative to the
purpose and/or intent of the possession."

The question relates to the fourth element of the alleged crime. The Court's charge stated:

As to the fourth element, for purposes of this section of the National Firearms Act, knowingly simply means the defendant was conscious of his possession of the weapon. Willfully means that possession was voluntary and intentional.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident, or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted of an act done because of mistake or accident or other innocent reason.

An act is done willfully if done voluntarily

and intentionally, with specific intent to do something which the law forbids; that is, with bad purpose, and to disregard the law.

I think to be more specific one might add, as an example, if the evidence disclosed that one were to find a sawed-off shotgun along the highway, and bring it home and turn it over to the police, such evidence standing alone would not be an unlawful possession, because it would be possession because of innocent reason.

Should you find from the testimony here that the defendant simply had fleeting possession of the gun in the car, having just discovered it moments before the police arrived, and was about to dispose of it in the river, as he described, that alone, standing alone, would not be willful possession.

I think that answers the question. The jury may now retire.

(The jury retired for further deliberations at 2:10 p.m.)

(In the absence of the jury.)

THE COURT: Any discussion by the Government?

MR. DABROWSKI: No, your Honor.

THE COURT: By the defendant?